

**IN THE JUSTICE OF THE PEACE COURT OF
THE STATE OF DELAWARE, IN AND FOR KENT COUNTY
COURT NO. 16**

NADINE ADELE	§	
Plaintiff Below,	§	
Appellant	§	
	§	
VS	§	C.A. No. JP16-17-007304
	§	
	§	
RENEE CLIFTON	§	
PATRICK CLIFTON	§	
Defendant Below,		
Appellee		

TRIAL DE NOVO

Submitted: April 24, 2018

Decided: April 30, 2018

APPEARANCES:

NADINE ADELE, Plaintiff represented by Adam C. Gerber, Esquire.

RENEE CLIFTON, Defendant represented by Joseph D. Stanley, Esquire.

PATRICK CLIFTON, Defendant represented by Joseph D. Stanley, Esquire.

Alan G. Davis, Chief Magistrate
Cathleen M. Hutchison, Deputy Chief Magistrate
Dwight D. Dillard, Justice of the Peace

**IN THE JUSTICE OF THE PEACE COURT OF
THE STATE OF DELAWARE, IN AND FOR KENT COUNTY
COURT NO. 16**

CIVIL ACTION NO: JP16-17-007304

NADINE ADELE VS RENEE CLIFTON ET AL

ORDER ON TRIAL DE NOVO

Procedural Posture

This case was brought as a forthwith action on November 16, 2017 by Plaintiff seeking possession of a rental unit and damages for unlawful ouster and the value of goods still in the unit. Forthwith status was granted primarily on the basis that some of the goods claimed to be in the unit were related to Plaintiff's medical care. The Constable was unable to make direct service with the Defendants since they lived in North Carolina, but, eventually, through counsel, Defendants entered an appearance, preserving their rights to contest service of process. An initial hearing took place on November 27, 2017 at which a motion to dismiss was considered by the Court. The matter was continued after the hearing and all parties were ordered to appear at the next scheduled event. At the next hearing on December 12, 2017 the Court heard testimony with regard to the facts of the case as they pertained to the motion to dismiss, but never held a trial, as the motion was granted.

Plaintiff filed for an appeal timely and this case was scheduled for April 24, 2018, taking the calendars of counsel in consideration. Chief Magistrate Davis, Deputy Chief Magistrate Hutchison and Judge Dillard heard the appeal. At that hearing, counsel for the Defendants renewed the motion to dismiss for both lack of subject matter jurisdiction and for lack of service of process. The Court, after hearing the arguments of counsel, recessed and deliberated before returning to the bench and announcing its decision on the motion in open court. The Court granted the motion, explaining its rationale. This is the written follow-up to that oral decision.

Facts

Nadine Adele and Renee Clifton are sisters. The Clifton's own the house in which Ms. Adele had been living for some time. Their brother had also been on the lease, but had not, from the information available to the Court, lived there under the lease. At some point, the sisters had a falling out. It was so significant a situation that each filed protection from abuse (PFA) orders against the other in Family Court. Those PFA petitions were resolved through a stipulated agreement, which not only set forth the circumstances by which they would avoid any future unpleasantness, but provided specific times for Plaintiff to remove certain belongings from the house. The periods to which Plaintiff was limited in having access to the property were stringent and limiting. The agreement also stated that the parties reserved their rights to file actions in other courts related to landlord/tenant claims or estate matters.

The Court does not know if Plaintiff was refused access to the property to retrieve her items or if she failed to do so for some reason. Nevertheless, Plaintiff filed this action three days after the last window of time the agreement gave her for access.

Discussion

The Court granted the motion to dismiss for lack of subject matter jurisdiction. Granting that motion mooted the need to consider the service of process issue. Below is the Court's rationale for granting the motion.

The Justice of the Peace Court has exclusive jurisdiction over the claim of possession in landlord-tenant relationships. Parties can always come to an agreed upon termination or alteration of the terms of a landlord-tenant relationship without the Court's intervention, so long as it is not under a set of conditions or circumstances prohibited by the Landlord-Tenant Code. Here the parties entered into an agreement with regard to how the rental premises was going to be treated in a stipulated agreement resolving cross-filed PFA petitions.

The agreement in question is a bit ambiguous when it comes to the question of possession. On the one hand it seems to limit the ability of the Plaintiff to have access to the property; on the other hand, it says they preserve their rights in landlord-tenant. While the Court, without additional facts in the record, declines to say that the agreement foreclosed all potential for future possession, it is clear that the agreement was controlling on the issue of possession for at least the period in which this action was initiated.

The agreement was executed on November 7th. Plaintiff was supposed to obtain goods from the property in a short window prior to November 13th. Plaintiff was also supposed to remove the piano within 30 days. This tells us that possession by the Plaintiff must not have been contemplated by either party for at least 30 days. It is also evident that something went awry with the agreement, as Plaintiff filed this action only a few days later on November 16th, basing her claim in part for many of the goods identified under the agreement.

If Plaintiff had a problem getting the Defendants to conform to the agreement's terms or she was unable to keep her part of the bargain for pick-up of the items, her recourse was to seek the assistance of the Family Court in enforcing or relieving her of her responsibilities under the stipulation. Although it may have been questionable in the first place for Family Court to have signed off on a stipulation dealing with matters not directly related to the question of the cross-filed PFA petitions before it, the fact of the matter is that the return of the goods is now an issue within the purview of that Court. This Court cannot modify or enforce the terms of another Court's order or interpret them for that purpose.

Likewise, that Court cannot resolve the issue of possession of the rental property. Because this action was filed prior to the minimum time period in which possession could be at issue under the plain terms of the stipulation, this Court has no subject matter jurisdiction over this particular case. That is not to say that a newly filed, served and plead matter could not be adjudicated by this Court. For that reason, with regard to the issue of possession only, this dismissal is without prejudice.

IT IS SO ORDERED this 30TH day of April, 2018

/s/ Alan Davis (SEAL)
C.M. Davis for the Court

Information on post-judgment procedures for default judgment on Trial De Novo is found in the attached sheet entitled Justice of the Peace Courts Civil Post-Judgment Procedures Three Judge Panel (J.P. Civ. Form No. 14A3J).

**IN THE JUSTICE OF THE PEACE COURT OF
THE STATE OF DELAWARE, IN AND FOR KENT COUNTY
COURT NO. 16**

COURT ADDRESS:
414 FEDERAL STREET ROOM 173
DOVER DE 19901

CIVIL ACTION NO:
JP16-17-007304

NADINE ADELE, PLAINTIFF

VS

RENEE CLIFTON, PATRICK CLIFTON, DEFENDANT

Plaintiff Parties:

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PLAINTIFF
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DOVER, DE 19904

Defendant Parties:

DEFENDANT
SYSTEM ID: @3021239
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FRANKLINTON, NC 27525

DEFENDANT
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Other Case Parties:

**JUSTICE OF THE PEACE COURT
CIVIL POST- JUDGMENT PROCEDURES
THREE JUDGE PANEL**

[This information is not legal advice and not a substitute for seeking legal advice from an attorney. This information is not binding on the court if incorrect or misunderstood. It relates to frequently asked questions concerning post-judgment procedures but does not address all of the possible procedures and may not apply in your particular case. Forms for these procedures may be obtained from any Justice of the Peace Court civil location. All motions must include the name of the court, the names of the parties, the case number, the date the motion is filed with the Justice of the Peace Court and a title indicating the reason for the motion. Court costs or fees must accompany the motion, unless the person has requested, and the court determined, that the person may proceed in forma pauperis (without paying costs or fees or posting bond because they have no money to pay).]

All payments should be made directly to the prevailing party. The Court does not accept payment on judgments.

Pursuant to 10 Del. C. § 9567(b), prevailing parties are reminded of their duty to file a satisfaction of the judgment within 90 days of payment in full.

FAILURE OF A PARTY TO APPEAR FOR THE PANEL TRIAL

As provided by Justice of the Peace Civil Rule 72.1(f), if the Appellant (the party who requested the appeal trial) or both parties fail to appear for the trial, the judgment of the court below shall stand unless the Appellee appears and has filed a counterclaim.

If the Appellee (the party against whom the appeal was taken) fails to appear and a DEFAULT JUDGMENT is entered, that party may file a Motion to Vacate the judgment pursuant to Justice of the Peace Civil Rule 60. The Motion must show; (1) the Appellee's failure to appear was the result of actions of a reasonably prudent person; and (2) the outcome would be different if the trial were held; and (3) the party that appeared would not be prejudiced by having the trial. The Motion must be filed within 10 days, starting the day after the judgment was signed by the De Novo Panel. **A FEE OF \$15.00 MUST ACCOMPANY THIS MOTION.**

MOTION FOR A NEW TRIAL

Either party has 10 days, starting the day after the judgment was signed by a Judge, to file a Motion for A New Trial as provided under Justice of the Peace Court Civil Rule 59. This Motion shall be in writing and shall briefly and succinctly state the reasons for the request. A Motion for A New Trial will be heard by the Panel of Judges who originally heard the case. The reasons for which a new trial may be granted are limited. For example, the reason given for requesting a new trial may be newly discovered evidence. However, for the Panel to grant a motion for a new trial based upon newly discovered evidence, the party requesting the new trial must show all of the following: (1) the newly discovered evidence is important enough to change the result in the case; (2) the evidence could not have been discovered prior to the original trial with reasonable investigation; and (3) the evidence does not merely repeat or dispute evidence presented in the original trial. **A FEE OF \$15.00 MUST ACCOMPANY THIS MOTION.**